

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION**

FS MEDICAL SUPPLIES, LLC,

Plaintiff,

v.

TANNERGAP, INC. AND TANNER  
PHARMA UK LIMITED,

Defendants;

and

FS MEDICAL SUPPLIES, LLC,

Plaintiff,

v.

TANNER PHARMA UK LIMITED; RAYMOND  
FAIRBANKS BOURNE; MARY EVERETT  
BOURNE,

Defendants.

Case No. 3:21-cv-501-RJC-WCM

Case No. 3:23-cv-598-RJC-WCM

**TANNER PHARMA UK LIMITED’S AND TANNERGAP, INC.’S RESPONSE IN  
OPPOSITION TO FSMS’S EMEGENCY MOTION FOR EXPEDITED BRIEFING AND  
HEARING ON MOTION FOR PROTECTIVE ORDER AND TO SET A CONFERENCE**

Tanner Pharma UK Limited (“TPUK”) and TannerGAP, Inc. (“TannerGAP,” and together, the “Tanner Defendants”) respectfully submit this Response in Opposition to Plaintiff FS Medical Supplies, LLC’s (“FSMS”) Emergency Motion for Expedited Briefing and Hearing on Motion for Protective Order and to Set a Conference (“Motion”). FSMS’s Motion should be denied.

1. Contrary to FSMS's assertions, there is no "emergency" and no good cause for the Court to intervene now, or to expedite briefing on FSMS's Motion for Protective Order filed on Wednesday, October 23, 2024. Dkt. 201.

2. On October 15, 2024, TPUK and TannerGAP served a notice of deposition on FSMS notifying it that TPUK and TannerGAP were going to take the Rule 30 deposition of nonparty witness Charles Roach on October 24, 2024, a workable date for Roach. Exhibit A. (Roach has already been served with a Rule 45 document subpoena, to which FSMS did not object, and he produced responsive documents in July.)

3. Roach agreed to sit for a deposition voluntarily.

4. TPUK and TannerGAP conferred with FSMS about the date of Roach's deposition, and to accommodate FSMS's counsel's schedule, TPUK, TannerGAP, and Roach agreed to postpone the duly noticed deposition until November 6, 2024. *See* Exhibit B.

5. Two days after the TPUK and TannerGAP agreed to this accommodation, FSMS moved for a protective order seeking to prohibit them from taking Roach's deposition *entirely*, based only on the contention that (in FSMS's view, which TPUK and TannerGAP refute) Roach's testimony is irrelevant to the claims and defenses currently in the case.<sup>1</sup>

6. FSMS's argument is based on the incorrect premise that the information sought from Roach is relevant only to TPUK's and TannerGAP's proposed amendments to their Answer and Counterclaim, which are currently pending before the Court. *See* Dkt. 179. But as TPUK and TannerGAP will explain in their forthcoming opposition to FSMS's Motion for Protective Order, Roach (and the other witnesses TPUK and TannerGAP plan to depose) has knowledge and

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<sup>1</sup> FSMS also seeks to severely, and inappropriately, restrict the scope of what TPUK and TannerGAP may depose FSMS's Rule 30(b)(6) corporate designee about and prohibit the depositions of two former FSMS's independent contractors. Dkt. 201.

information about the claims and defenses as currently pled. Roach is a former independent contractor of FSMS, who worked on its website during the relevant time period. He was working with FSMS principals Laird Cagan and Jim Mao in September 2020 and, through his business Charles & Company entered a Consulting Services Agreement with FSMS on November 29, 2020. His personal knowledge of and experience working with FSMS is highly relevant to the claims and defenses currently pled and well within the scope of discovery under Rule 26.

7. Roach is a **willing** non-party witness who has already produced documents to TPUK and TannerGAP in response to a document subpoena that FSMS did not seek to quash or file objections to. FSMS has thus been on notice of TPUK's and TannerGAP's intention to seek discovery from Roach since July 15, 2024. Exhibit C.

8. This is a routine (and unnecessary) discovery disagreement and there is nothing emergent about these circumstances to justify an expedited briefing schedule. TPUK and TannerGAP recognize that the Court and the Asheville Division have been operating in true emergency conditions for multiple weeks in the aftermath of Hurricane Helene. FSMS's attempt to block a deposition of a witness with material, relevant information is not an "emergency" by any measure. Indeed, FSMS has articulated no harm or prejudice that it will suffer should Roach's deposition testimony proceed as scheduled on November 6. Nor can it. FSMS's Motion seeks to improperly constrain fact discovery and thwart the Tanner Defendants' ongoing depositions of fact witnesses, and to voice its other grievances. *See* Dkt. 203 at 3.

9. TPUK and TannerGAP will respond comprehensively and timely to FSMS's Motion for Protective Order, but respectfully submit this interim response to object to FSMS's "Emergency" Motion and the inaccurate portrayal of a routine fact witness deposition under Rule 30 as somehow improper.

10. The Court should deny FSMS's Motion. The Tanner Defendants will comply with the briefing schedule set by this Court's Local Rules, or with any briefing schedule convenient to the Court.

This the 25<sup>th</sup> day of October, 2024.

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*Attorneys for Defendants TannerGAP, Inc.  
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### **CERTIFICATION**

Pursuant to this Court's June 18, 2024 Order regarding the use of artificial intelligence, the undersigned states that:

1. No artificial intelligence was employed in doing the research for the preparation of this document, with the exception of such artificial intelligence embedded in the standard on-line legal research sources such as Westlaw, Lexis, FastCase, and Bloomberg; and
2. Every statement and every citation to an authority contained in this document has been checked by an attorney in this case and/or a paralegal working at his/her direction as to the accuracy of the proposition for which it is offered, and the citation to authority provided.

This the 25<sup>th</sup> day of October, 2024.

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